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HOUSE BILL 950

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Brian K. Moore

AN ACT

RELATING TO TAXATION; EXPANDING CRITERIA FOR ELIGIBILITY FOR
THE RENEWABLE ENERGY PRODUCTION TAX CREDIT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 7-2A-19 NMSA 1978 (being Laws 2002,
Chapter 59, Section 1, as amended) is amended to read:

"7-2A-19. RENEWABLE ENERGY PRODUCTION TAX CREDIT--
LIMITATIONS--DEFINITIONS--CLAIMING THE CREDIT.--

A. The tax credit provided in this section may be referred to as the "renewable energy production tax credit". A taxpayer ~~[that owns a qualified energy generator certified by the energy, minerals and natural resources department]~~ is eligible for a tax credit in an amount equal to one cent (\$.01) per kilowatt-hour for the first four hundred thousand megawatt-hours of electricity produced by the qualified energy generator

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1 using a qualified energy resource in the taxable year if the
2 taxpayer:

3 (1) holds title to a qualified energy
4 generator;

5 (2) directly or indirectly owns at least five
6 percent of a business entity that holds title to a qualified
7 energy generator;

8 (3) leases property upon which a qualified
9 energy generator operates from a county or municipality under
10 authority of an industrial revenue bond; or

11 (4) is allocated part of or an entire amount
12 of a renewable energy production tax credit pursuant to
13 Subsection E of this section.

14 B. A taxpayer eligible for a renewable energy
15 production tax credit pursuant to Subsection A of this section
16 shall be eligible for the tax credit for ten consecutive years,
17 beginning on the date the qualified energy generator begins
18 producing electricity. [~~The tax credit provided in this~~
19 section may be referred to as the "renewable energy production
20 tax credit".

21 ~~B.]~~ C. As used in this section:

22 (1) "biomass" means agricultural or animal
23 waste; thinnings from trees less than fifteen inches in
24 diameter, slash and brush; lumbermill or sawmill residues; and
25 salt cedar and other phreatophytes removed from watersheds or

1 river basins;

2 (2) "qualified energy generator" means a
3 facility with at least ten megawatts generating capacity
4 located in New Mexico that produces electricity using a
5 qualified energy resource and that sells that electricity to an
6 unrelated person; and

7 (3) "qualified energy resource" means a
8 resource that generates electrical energy by means of a
9 fluidized bed technology or similar low-emissions technology or
10 a zero-emissions generation technology that has substantial
11 long-term production potential and that uses only the following
12 energy sources:

- 13 (a) solar light;
- 14 (b) solar heat;
- 15 (c) wind; or
- 16 (d) biomass.

17 ~~[E.]~~ D. A taxpayer that holds title to a facility
18 generating electricity from a qualified energy resource or one
19 that leases such a facility from a county or municipality
20 pursuant to an industrial revenue bond may request
21 certification of eligibility for the renewable energy
22 production tax credit from the energy, minerals and natural
23 resources department, which shall determine if the applicant is
24 ~~[a qualified energy generator]~~ eligible for the tax credit
25 pursuant to Subsection A of this section; provided that the

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1 department may certify the eligibility of an energy generator
2 only if the total amount of electricity that may be produced
3 annually by all qualified energy generators that are certified
4 will not exceed two million megawatt-hours. Applications shall
5 be considered in the order received. The energy, minerals and
6 natural resources department may estimate the annual power-
7 generating potential of a generating facility for the purposes
8 of this section. The energy, minerals and natural resources
9 department shall issue a certificate to the applicant stating
10 whether the applicant is [an] eligible [~~qualified energy~~
11 ~~generator~~] for the renewable energy production tax credit
12 pursuant to Subsection A of this section and the estimated
13 annual production potential of the generating facility owned or
14 leased by the taxpayer, which shall be the limit of that
15 facility's energy production eligible for the tax credit for
16 the taxable year. The energy, minerals and natural resources
17 department may issue rules governing the procedure for
18 administering the provisions of this subsection.

19 ~~[D. To claim a renewable energy production tax~~
20 ~~credit, a taxpayer that has been certified as eligible pursuant~~
21 ~~to Subsection C of this section shall submit]~~

22 E. A taxpayer certified as eligible for the
23 renewable energy production tax credit pursuant to Subsection D
24 of this section and that is taxed for federal income tax
25 purposes as a partnership may allocate all or a portion of the

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1 right to claim the renewable energy production tax credit to a
2 taxpayer who owns an interest in that partnership. The
3 taxpayer shall provide notice to the taxation and revenue
4 department of that allocation in a form prescribed by the
5 department. The department shall certify the allocation in
6 writing to the recipient of the allocation.

7 F. A taxpayer that receives certification pursuant
8 to Subsection D of this section shall claim a renewable energy
9 production tax credit by submitting to the taxation and revenue
10 department the certificate issued by the energy, minerals and
11 natural resources department, documentation of the amount of
12 electricity produced by the taxpayer's facility in the taxable
13 year and any other information the taxation and revenue
14 department may require to determine the amount of the tax
15 credit due the taxpayer.

16 G. A taxpayer that receives certification pursuant
17 to Subsection E of this section shall claim the renewable
18 energy production tax credit by submitting to the taxation and
19 revenue department, in a form prescribed by the department, a
20 copy of that certification, documentation of the amount of
21 electricity produced by the qualified energy generator owned or
22 leased by the partnership of which the taxpayer owns an
23 interest and any other information required by the department
24 for determination of the amount of the tax credit due.

25 [~~E.~~] H. Once a taxpayer has been granted a

1 renewable energy production tax credit for a given facility,
2 that taxpayer shall be allowed to retain its original date of
3 application for tax credits for that facility until either the
4 facility goes out of production for more than six consecutive
5 months in a year or until the facility's ten-year eligibility
6 has expired.

7 ~~[F.]~~ I. The renewable energy production tax credit
8 may be deducted from the taxpayer's New Mexico corporate income
9 tax liability for the taxable year. If the amount of the tax
10 credit claimed exceeds the taxpayer's corporate income tax
11 liability, the excess may be carried forward for up to five
12 consecutive taxable years. "

13 Section 2. APPLICABILITY. --The provisions of this act
14 apply to taxable years beginning on or after January 1, 2005.